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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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BY _____

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TOBY G. SCAMMELL,

Defendant.

Case No. **LACV 11-6597** (DSF(MRW))
**COMPLAINT FOR VIOLATIONS
OF THE FEDERAL SECURITIES
LAWS**

1 Plaintiff Securities and Exchange Commission ("Commission") alleges as
2 follows:

3 **SUMMARY OF THE ACTION**

4 1. This case involves unlawful insider trading by Defendant Toby G.
5 Scammell (the "Defendant" or "Scammell") in the securities of Marvel
6 Entertainment, Inc. ("Marvel") just a few weeks before the August 31, 2009
7 announcement that the Walt Disney Company ("Disney") planned to acquire
8 Marvel for \$50 per share.

9 2. From August 13, 2009 through August 28, 2009, Scammell, who was
10 24 years old at the time, spent \$5465 on highly speculative and risky purchases of
11 options to buy stock ("call options") of Marvel that expired within a few weeks.
12 Specifically, between August 13, 2009 and August 28, 2009, Scammell purchased
13 647 Marvel call option contracts which entitled him to purchase Marvel stock at
14 prices of \$50 and \$45 (the so-called "exercise" or "strike" price) that would expire
15 on September 19, 2009. On August 28, 2009, Scammell also purchased: (1) 9 call
16 option contracts with a strike price of \$40 and an expiration date of September 19,
17 2009; and (2) 3 call option contracts with a strike price of \$40 and an expiration
18 date of December 18, 2009.

19 3. At the time Scammell purchased these Marvel securities, Marvel's
20 stock price had never closed above \$41.74, making Scammell's purchase of
21 Marvel call options with strike prices of \$50 and \$45 highly remarkable,
22 especially where the majority of the options were set to expire within a few
23 weeks. In many instances, Scammell's transactions represented over 90% of the
24 market volume for the option series purchased by Scammell.

25 4. Scammell had never before traded in Marvel securities and had only
26 one, very unsuccessful, prior experience trading call options.

27 5. Scammell had limited personal funds at the time he purchased the
28 Marvel call options, so he secretly used the funds of his older brother to purchase

1 more than half of the Marvel call options. Scammell had obtained trading
2 authority over his brother's account when his brother was deployed to serve in
3 Iraq with the United States Army in March 2006.

4 6. After the announcement on Monday, August 31, 2009 that Disney
5 planned to acquire Marvel, Marvel shares closed at \$48.37, up more than 25%
6 from the closing price of \$38.65 on Friday, August 28, 2009.

7 7. Over the next few days following the August 31 announcement,
8 Scammell sold all of the Marvel option contracts in his account and in the account
9 belonging to his brother. In less than one month, Scammell made a total of more
10 than \$192,497 (or over 3000%) in profits from trading while aware of material
11 nonpublic information.

12 8. Prior to the announcement, Scammell misappropriated news of
13 Disney's impending acquisition of Marvel from his girlfriend of two years.

14 9. In June 2009, Scammell's girlfriend began a six month externship in
15 Disney's corporate strategy department in Burbank, California. During a staff
16 meeting at Disney on or about June 30, 2009, Scammell's girlfriend was told that
17 Disney planned to acquire Marvel, and Scammell's girlfriend was later assigned to
18 work on the Marvel acquisition.

19 10. Scammell's girlfriend worked long hours on the Marvel acquisition
20 during July and August 2009, before the acquisition was announced, and received
21 detailed information about the acquisition, including the \$50 per share acquisition
22 price and when the acquisition would be announced. Scammell lived with his
23 girlfriend in Los Angeles, California, in July 2009, and after he moved out in
24 August 2009 he continued to speak with her several times each day by telephone.

25 11. In breach of his duty of trust and confidence to his girlfriend,
26 Scammell misappropriated from his girlfriend material nonpublic information
27 regarding Disney's impending acquisition of Marvel. Scammell exploited his
28 personal relationship for monetary gain, and his misuse of confidential

1 information gave him an illegal advantage over other traders in the market.

2 12. Scammell violated Section 10(b) of the Securities Exchange Act of
3 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and Exchange Act Rule 10b-5,
4 17 C.F.R. § 240.10b-5, by trading in Marvel securities while he was aware of
5 material nonpublic information, in breach of a duty of trust or confidence
6 Scammell owed to his girlfriend.

7 **JURISDICTION AND VENUE**

8 13. The Commission brings this action pursuant to Sections 21(d) and
9 21A of the Exchange Act, 15 U.S.C. §§ 78u(d) & 78u-1.

10 14. This Court has jurisdiction over this action pursuant to Sections
11 21(e), 21A and 27 of the Exchange Act, 15 U.S.C. §§ 78u(e), 78u-1 & 78aa.

12 15. In connection with the conduct described herein, Scammell, directly
13 or indirectly, made use of the means or instrumentalities of interstate commerce,
14 or the mails, or the facilities of a national securities exchange.

15 16. Venue is proper in this district pursuant to Section 27 of the
16 Exchange Act, 15 U.S.C. § 78aa, because a substantial portion of the conduct
17 alleged in this Complaint occurred within the Central District of California. As
18 alleged in this Complaint, much of the conduct arose out of Scammell's
19 misappropriation of material nonpublic information while he lived with his
20 girlfriend in Los Angeles, California, and while his girlfriend worked at Disney in
21 Burbank, California.

22 **DEFENDANT**

23 17. **Toby G. Scammell**, age 26, currently resides in Greenbrae,
24 California.

25 **OTHER RELEVANT ENTITIES**

26 18. **The Walt Disney Company**, a Delaware corporation, has its
27 principal offices in Burbank, California.

28 19. **Marvel Entertainment, Inc.** was an entertainment company

1 incorporated in Delaware with its principal place of business in New York, New
2 York. On August 31, 2009, Disney and Marvel publicly announced that Marvel
3 had agreed to be acquired by Disney in a stock and cash deal valued at \$50 per
4 share. Prior to the acquisition, Marvel had a class of securities registered pursuant
5 to Section 12(b) of the Exchange Act and Marvel common shares were listed on
6 the New York Stock Exchange under the symbol "MVL." Following the approval
7 of the acquisition between Marvel and Disney on January 1, 2010, Marvel
8 shareholders received Disney stock and Marvel stock was deregistered.

9 FACTS

10 **A. Through His Girlfriend, Scammell Became Aware That Disney Planned** 11 **to Announce By Labor Day 2009 That It Would Acquire Marvel**

12 20. Scammell and his girlfriend met in July 2007 while working together
13 in Los Angeles, California at a consulting company. In or around September or
14 October 2007, Scammell and his girlfriend began a romantic relationship.

15 21. In June 2009, Scammell's girlfriend began an externship at the
16 corporate strategy department at Disney in Burbank, California. Scammell was
17 aware that his girlfriend was working in Disney's corporate strategy department
18 and was working on mergers, acquisitions and similar projects.

19 22. On or about June 30, 2009, Scammell's girlfriend attended a staff
20 meeting at Disney in which she learned that Disney planned to acquire Marvel.
21 Scammell's girlfriend was told and understood that such information was
22 confidential.

23 23. On June 30, 2009, following the staff meeting, Scammell's girlfriend
24 sent an e-mail to Scammell, who was vacationing in Africa at the time, referring
25 to the Marvel acquisition, although she did not identify Marvel by name.
26 Specifically, Scammell's girlfriend wrote to Scammell in an e-mail on June 30,
27 2009: "There's this opportunity at work to get placed on a really cool project.
28 Basically, it would give me a lot of finance/valuation experience, great on my

1 resume, will get exposure to all parts of the process of this thing, and will provide
2 steady staffing for the next 3+ months which would be awesome.” She further
3 stated in the e-mail that “[i]t would be something that people would recognize
4 right away.” Scammell’s girlfriend explained in the email that she could not tell
5 Scammell the name of the entity involved because of “confidentiality,” but she
6 noted that “it’s very recognizable and nothing I’ve mentioned before.” She wrote
7 that the “downside” would be “that it will be super tough, crazy hours, and
8 working with not such a great team.” She informed Scammell that it would be
9 staffed “in the next day or two” and “it could be a pretty amazing experience” and
10 wrote back a few hours later explaining that “[i]t looks like this deal’s too big for
11 my first gig, a bit of a disappointment but we’ll see.”

12 24. In mid-July 2009, Scammell returned from Africa and moved into his
13 girlfriend’s apartment in Los Angeles, California. Scammell had access to his
14 girlfriend’s Blackberry on occasion, and she would give him the password so that
15 he could look up an address or directions.

16 25. By July 24, 2009, the Marvel deal had heated up at Disney, and
17 Scammell’s girlfriend was assigned to work on it. Scammell’s girlfriend sent a
18 text message to Scammell the morning of July 24, 2009, telling him that she had
19 been “pulled on ‘the big project.’”

20 26. During the next five weeks, Scammell’s girlfriend worked long hours
21 on the Marvel acquisition, including sometimes from home, and received detailed
22 information about the anticipated acquisition, including the \$50 per share
23 acquisition price and when the acquisition would be announced.

24 27. Although Scammell moved to San Francisco on or about August 2,
25 2009, in order to work as an associate for an investment fund, Scammell and his
26 girlfriend continued to speak by telephone several times each day and spent the
27 weekend of August 21-23, 2009, together.

28 28. Scammell and his girlfriend often discussed her work projects at

1 Disney, and Scammell was aware that his girlfriend was working on a large
2 acquisition at Disney. Scammell and his girlfriend had multiple discussions about
3 whether his girlfriend should delay her business school applications so that she
4 could write about the high-profile acquisition she was working on at Disney as
5 part of her business school applications.

6 29. By August 10, 2009, Scammell's girlfriend learned that the
7 acquisition would be announced by Labor Day and informed Scammell that the
8 timing of the announcement would allow them to attend her friend's wedding.
9 Around this time, Scammell began searching the internet regarding call options.

10 30. By no later than August 13, 2009, Scammell had obtained the
11 identity of the acquisition target from his girlfriend, whether through overhearing
12 one or more of his girlfriend's Marvel-related conversations, by seeing electronic
13 or paper documents in her possession related to the Marvel acquisition, or through
14 her conversations with him.

15 **B. After Becoming Aware of Material Nonpublic Information about**
16 **Marvel, Scammell Purchased Marvel Call Options**

17 31. From August 13 through August 28, 2009, Scammell purchased 659
18 Marvel call option contracts with strike prices of \$50, \$45 and \$40. Specifically,
19 Scammell purchased the following:

- 20 a. On August 13, 2009, Scammell purchased 125 Marvel call option
21 contracts with a strike price of \$50 and an expiration date of
22 September 19, 2009, in his brother's account.
- 23 b. On August 14, 2009, Scammell purchased 2 Marvel call option
24 contracts with a strike price of \$45 and an expiration date of
25 September 19, 2009, in his brother's account.
- 26 c. On August 17, 2009, Scammell purchased 60 Marvel call option
27 contracts with a strike price of \$45 and an expiration date of
28 September 19, 2009, in his account.

- d. On August 26, 2009, Scammell purchased 75 Marvel call option contracts with a strike price of \$45 and an expiration date of September 19, 2009, in his account.
- e. On August 27, 2009, Scammell purchased 200 Marvel call option contracts with a strike price of \$45 and an expiration date of September 19, 2009, in his brother's account.
- f. On August 28, 2009, Scammell purchased 110 Marvel call option contracts with a strike price of \$45 and an expiration date of September 19, 2009, in his account.
- g. On August 28, 2009, Scammell purchased 75 Marvel call option contracts with a strike price of \$45 and an expiration date of September 19, 2009, in his brother's account.
- h. On August 28, 2009, Scammell purchased 9 Marvel call option contracts with a strike price of \$40 and an expiration date of September 19, 2009, in his account.
- i. On August 28, 2009, Scammell purchased 3 Marvel call option contracts with a strike price of \$40 and an expiration date of December 18, 2009, in his brother's account.

32. Scammell used the internet to purchase all of the Marvel call options through Ameritrade.

33. Scammell spent a total of \$5464.16 on the Marvel call options he purchased in his account and in his brother's account. Scammell's brother had given Scammell power of attorney to act on his behalf regarding financial matters when he was deployed to serve in Iraq with the United States Army in March 2006. Scammell continued to manage his brother's finances after his return from Iraq in 2007, and although they spoke frequently, Scammell never told his brother that he had invested his brother's money in Marvel.

34. Between August 31, 2009 (the date it was announced that Disney

1 would acquire Marvel), and September 9, 2009, Scammell sold all of the Marvel
2 call options in his account and in his brother's account, including those with a \$50
3 strike price, for \$197,960.77 and reaped profits of \$192,496.61.

4 **C. Scammell's Purchases of Marvel Call Options Were Unusual**

5 35. Scammell had never invested in Marvel before he began acquiring
6 the Marvel call options in August 2009. During the time that he invested in
7 Marvel, Scammell did not purchase any other securities. Scammell's only prior
8 purchase of call options involved the purchase of Google long-term call options
9 that did not expire for more than one year and which he sold at a loss of more than
10 99%.

11 36. Scammell's purchase of the Marvel options represented over 90% of
12 the daily market volume for those options in most instances. Scammell
13 represented 100% of the daily market volume for the series of call options he
14 purchased in the following instances: (1) on August 13, 2009, when he purchased
15 the September \$50 Marvel call options; (2) on August 14, 2009, when he
16 purchased September \$45 Marvel call options; and (3) on August 27, 2009, when
17 he purchased the September \$45 Marvel call options.

18 37. Scammell knew that Marvel's stock price had never been above
19 \$41.74 when he purchased the short term call options with strike prices of \$50 and
20 \$45.

21 38. The first Marvel call options Scammell purchased had a strike price
22 of \$50, the specific amount Disney agreed to pay for Marvel stock.

23 39. Except for the three Marvel call options with a strike price of \$40 that
24 Scammell purchased on August 28, 2009, all of the Marvel call options Scammell
25 purchased were set to expire on September 19, 2009, just a few weeks after the
26 Marvel acquisition was to be announced.

27 40. Scammell's pattern of trading was especially unusual on Friday,
28 August 28, the last trading day before the acquisition announcement. On that

1 date, Scammell placed ten separate limit orders to purchase Marvel call options
2 with a strike price of \$40, canceled each one within less than a few hours when it
3 was not successful, and then increased his bid. He continued this pattern of
4 trading throughout the day, until he was finally able to purchase the call options
5 with a strike price of \$40 just a few minutes before trading closed on August 28,
6 2009.

7 **D. Additional Circumstantial Evidence of Scammell's Insider Trading**

8 41. Scammell purchased short term Marvel call options, which had
9 exercise prices above the then-current price of Marvel stock (so-called "out-of-
10 the-money" call options) while he was aware of the impending announcement that
11 Disney would acquire Marvel.

12 42. The purchases were highly risky for Scammell personally. He had
13 limited funds at the time he purchased many of the Marvel call options, and
14 therefore Scammell used over \$2800 of his brother's money to purchase more
15 than half of the Marvel call options.

16 43. Scammell's use of his brother's funds was unusual. Scammell had
17 already arranged for his brother to automatically invest \$196 each month into his
18 brother's IRA account. The investment in Marvel call options represented an
19 amount that was more than fourteen times the normal monthly investment by
20 Scammell's brother.

21 44. Scammell's general investment strategy for his brother's brokerage
22 account and IRA account was to purchase "long-term, stock-only basket of stocks,
23 ETFs," not risky call options.

24 45. Scammell never told his brother he was researching or investing his
25 money in Marvel, even though Scammell spent the weekend with his brother just
26 two days after he purchased the initial Marvel call options in his brother's
27 account.

28 46. Scammell's brother e-mailed Scammell one week before Scammell

1 made the initial purchase of Marvel call options and wrote that he was "going to
2 need more in the bank over the next 2 weeks than usual due to various expenses"
3 and asked that Scammell therefore "sell some stocks etc. so that I have about
4 \$1000-\$2000 in my account to cover upcoming expenses."

5 47. Scammell was expecting to receive several thousand dollars at the
6 end of August 2009, but he used his brother's funds to make the initial investment
7 in Marvel because he believed it was necessary to invest in Marvel "before the
8 end of August."

9 48. On or about August 16, 2009, before Scammell purchased the
10 majority of the Marvel options, Scammell searched the internet for the terms
11 "insider trading," "tender offer," "Williams Act," "Rule 10b-5," and "material,
12 non-public information" and read several articles on Wikipedia regarding those
13 topics.

14 49. Scammell often discussed possible investments with friends,
15 including his girlfriend and his brother, but he never mentioned Marvel as a
16 possible investment to anyone, even though he claims he was doing substantial
17 research regarding Marvel throughout July and August 2009.

18 50. Scammell did not tell anyone, including his girlfriend or his brother,
19 about the more than \$192,000 he made in profits from his Marvel trades.

20 51. Scammell never told his brother that his brother's account earned
21 over \$100,000 in profits from the sale of Marvel call options. Instead, Scammell
22 moved \$100,000 of profits from the sale of Marvel call options into a new
23 account. Although Scammell had previously arranged for his brother to receive
24 an automatic update of his financial accounts each week by e-mail, Scammell did
25 not link the new account into which he transferred the proceeds of the trades to his
26 brother's automatic e-mail update. As a result, Scammell's brother did not learn
27 of the Marvel trades made in his account or of the resulting \$100,000 in profits in
28 his account until several months later when Scammell's brother was contacted as

1 part of the Commission's investigation in November 2009.

2 52. Scammell admitted that one of the reasons he did not tell his brother
3 about the substantial profits he earned from trading Marvel securities was because
4 "there was potential for, you know, somebody who is viewing two data points in
5 isolation without proper context to draw inaccurate conclusions" and he was
6 concerned that his brother would think that his girlfriend's work at Disney had
7 affected Scammell's decision to trade in Marvel.

8 **E. Scammell Failed to Provide a Credible Explanation For His Trades**

9 53. Scammell has failed to provide a credible explanation for his
10 purchase of the short term, out-of-the-money Marvel call options.

11 54. Scammell first claimed he originally became interested in investing
12 in Marvel because he believed that Marvel's comic content was undervalued and
13 that Marvel DVDs were more likely to be purchased rather than rented by
14 consumers. However, Scammell has admitted that he performed little or no
15 research on Marvel characters and he admitted that although Marvel "may be
16 better positioned than other players . . . they're going to suffer from the same
17 ultimate demise of their DVD sales" and in "seven years, they won't even make
18 DVDs."

19 55. Scammell also claimed he did extensive research regarding Marvel
20 and stated that Marvel's earnings the first week of August "were strong" and
21 "analysts agreed earnings and outlook were good." However, the articles and
22 analyst reports Scammell claims he read presented, at best, a mixed picture
23 regarding Marvel's future earnings and none suggested Marvel's stock price
24 would increase significantly within the next two to four weeks. In fact, most
25 articles noted that Marvel's revenues for the third quarter of 2009 were down from
26 the second quarter of 2009 and from the prior year. In addition, at least one article
27 Scammell claimed to have read stated that "[w]ith no new self-financed movies on
28 the 2009 schedule, Marvel Entertainment reported a sharp drop in earnings last

1 quarter.”

2 56. Scammell further claimed that he decided to buy additional \$45
3 Marvel call options for \$0.15 each on August 17, 2009, after he saw that the
4 options traded for \$0.25 on that day. He testified that he was “certain” he saw the
5 trade for \$0.25 on August 17 “because that’s something you definitely look at”
6 and since it was “the actual trade that happened” and “not theoretical,” it was
7 “powerful” and gave him “conviction.” However, no such \$0.25 trade actually
8 took place on that date.

9 57. Scammell claimed that a small increase in the Marvel stock price
10 would result in a significant increase in the price of the Marvel options he
11 purchased, even if only for a few seconds during the day. However, Scammell did
12 not have any limit orders in place to sell his Marvel call options prior to the
13 August 31, 2009 acquisition announcement. Therefore it was unlikely that any of
14 his call options would be sold even if Marvel’s stock temporarily increased during
15 an intraday price swing.

16 **F. Scammell Breached His Fiduciary Duty to His Girlfriend When He**
17 **Traded While He Was Aware of the Material Nonpublic Information**
18 **He Misappropriated from Her**

19 58. Based on the close nature of their relationship, Scammell owed his
20 girlfriend a duty of trust and confidence.

21 59. At the time he purchased the Marvel call options, Scammell had been
22 dating his girlfriend exclusively for two years, and Scammell considered his
23 girlfriend to be his best friend.

24 60. Scammell and his girlfriend often confided in each other and had a
25 history, pattern or practice of sharing personal and confidential information with
26 each other.

27 61. At all times, Scammell knew or was reckless in not knowing that his
28 girlfriend, due to her employment and position in the corporate strategy

1 department at Disney, had access to material nonpublic information about
2 prospective mergers or acquisitions involving Disney.

3 62. Scammell similarly knew or was reckless in not knowing that if he
4 obtained access to confidential information to which his girlfriend had access in
5 connection with her employment at Disney that he should maintain such
6 information in confidence and not use that information to his personal benefit.

7 63. By trading Marvel options while he was aware of material nonpublic
8 information he misappropriated from his girlfriend, Scammell breached a duty of
9 trust or confidence he owed to his girlfriend.

10 **G. Scammell Acted with Scienter When He Traded While He Was Aware**
11 **of the Material Nonpublic Information to Which His Girlfriend Had**
12 **Access**

13 64. In purchasing the Marvel call options, Scammell acted with scienter.

14 65. Scammell was familiar with the insider trading laws based upon his
15 experience, as well as his work and training at a consultant company in Los
16 Angeles, California.

17 66. In addition, Scammell researched the law regarding insider trading
18 prior to making most of his Marvel trades.

19 67. Scammell's girlfriend expressly told Scammell that the acquisition
20 target she was working on at Disney was confidential and Scammell understood
21 that his girlfriend's work at Disney was confidential.

22 68. Scammell knew, or was reckless in not knowing, that the information
23 he obtained from his girlfriend regarding the impending Marvel acquisition was
24 confidential, material, and nonpublic.

25 ///

26 ///

27 ///

28 ///

CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF
SECURITIES**

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

69. The Commission realleges and incorporates by reference ¶¶ 1 through 68, above.

70. As alleged above, Defendant Scammell learned material nonpublic information concerning Marvel from his girlfriend. At all relevant times, Scammell owed his girlfriend a fiduciary duty, or similar duty of trust or confidence, to maintain such information in confidence.

71. Scammell, in breach of fiduciary duty or similar relationship of trust or confidence owed to his girlfriend, misappropriated such material nonpublic information by trading on the basis of such information.

72. The misappropriated information was material because it would be important to a reasonable investor in making his or her investment decision. There is a substantial likelihood that the disclosure of the misappropriated information would have been viewed by a reasonable investor as having significantly altered the total mix of information available to investors.

73. At all times relevant to this Complaint, Scammell acted knowingly and/or recklessly by misappropriating material nonpublic information about the Marvel acquisition and purchasing Marvel call options on the basis of that information. Because he was aware of the material nonpublic information at the time he purchased Marvel call options, Scammell traded on the basis of that material nonpublic information.

74. By engaging in the conduct described above, Scammell, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;
- b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

75. By engaging in the foregoing conduct, Scammell violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Scammell committed the alleged violations.

II.

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Scammell and his agents, servants, employees, attorneys, and those persons in active concert or participation with him, who receive actual notice of the order by personal service or otherwise, from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

III.

Order Scammell to disgorge the illegal trading profits described herein, plus prejudgment interest.

IV.

Order Scammell to pay a civil penalty under Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

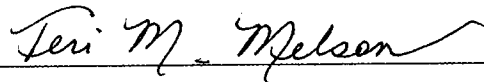
V.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: August 11, 2011

A handwritten signature in cursive script, reading "Teri M. Melson", is written over a horizontal line.

SPENCER E. BENDELL
TERI M. MELSON
Attorneys for Plaintiff
Securities and Exchange Commission

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Michael Wilner.

The case number on all documents filed with the Court should read as follows:

CV11- 6597 DSF (MRWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Spencer E. Bendell, Cal. Bar No. 181220
 Teri M. Melson, Cal. Bar No. 185209
 Securities and Exchange Commission
 5670 Wilshire Boulevard, 11th Floor
 Los Angeles, CA 90036
 (323) 965-3998

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION

CASE NUMBER

PLAINTIFF(S)

v.

TOBY G. SCAMMELL

DEFENDANT(S).

LACV11-6597 DSF(MRW)

SUMMONS

TO: DEFENDANT(S): Toby G. Scammell

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Spencer E. Bendell/Teri M. Melson, whose address is listed above. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: AUG 11 2011

By: SUSANA P. BUSTAMANTE
 Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) SECURITIES AND EXCHANGE COMMISSION		DEFENDANTS TOBY G. SCAMMELL	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Spencer E. Bendell and/or Teri M. Melson (323) 965-3998 Securities and Exchange Commission 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036		Attorneys (If Known) Miles Ehrlich (510) 548-3600 Ramsey & Ehrlich, LLP 803 Hearst Avenue Berkeley, CA 94710	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:35%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> <td style="width:10%; border: none; text-align: center;"><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:35%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; border: none; text-align: center;">PTF DEF</td> <td style="width:10%; border: none; text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td style="border: none;"></td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> <td style="border: none;"></td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td style="border: none;"></td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> <td style="border: none;"></td> </tr> </table>	Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2		Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3		Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	
Citizen of This State	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF DEF	<input type="checkbox"/> 4 <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2		Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5															
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3		Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6															

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify): _____
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Securities Fraud; 15 U.S.C. §78j(b) & 17 C.F.R. §240.10b-5 thereunder.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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LACV11-6597

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☒ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Toby G. Scammell - Marin County

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Ten. M. Melan Date August 11, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))